

STATE OF TENNESSEE



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STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

Solicitation Notice

May 2, 2016

Service Providers:

The State of Tennessee has issued a solicitation requesting proposals to provide service to the state. Your organization may be interested in responding. Please note the following solicitation highlights.

ID #	APS# 30901-31917
Scope of Service	The State of Tennessee Department of Treasury is seeking a contractor to provide marketing and advertising services for the sole purpose of assisting the TNStars® College Savings 529 Plan ("TNStars®") with increasing the number of accounts and assets in the plan.
Procuring State Agency	Treasury Department
Proposal Deadline	May 26, 2016
Contact Information	Dawn Rochelle 502 Deaderick Street 13th floor Andrew Jackson Building Nashville, TN 37243 Telephone: 615-253-8770 FAX: 615-770-7504 E-Mail: Dawn.Rochelle@tn.gov

The entire solicitation document and other current state solicitations and notices relating to professional service procurements are published on the Internet at:

<http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>

To download the subject document detailing all relevant specifications and directions, please visit this web page and locate the Solicitation Identification Number referenced above. The solicitation document is also available by communicating with the above-referenced contact person.

NOTICE: A number of unrelated solicitations and notices are also posted at the web site identified above. Please exercise care in selecting and downloading the correct solicitation document of interest to you.

We appreciate your interest in doing business with the state of Tennessee and hope that you will consider responding to this and other professional service requests for proposals.

**STATE OF TENNESSEE, DEPARTMENT OF TREASURY
ALTERNATE PROCUREMENT SOLICITATION**

Marketing and Advertising Services for the TNStars® 529 College Savings Plan

APS # 30901-31917

I. STATEMENT OF INTENT AND BACKGROUND

The State of Tennessee Department of Treasury is seeking a contractor to provide marketing and advertising services for the sole purpose of assisting the TNStars® College Savings 529 Plan (“TNStars®”) with increasing the number of accounts and assets in the plan. Launched in 2012, TNStars® is a 529 plan developed and maintained in accordance with 26 U.S.C. §529. Information about the plan may be found at www.tnstars.com.

Named after the section of the Internal Revenue Code, 529 plans are tax-advantaged vehicles for families to plan, save and invest for future college costs. Enrollment in TNStars® is open to individuals who are either residents of Tennessee or residing out-of-state. Funds saved in TNStars® may be used to cover qualified higher educational expenses, including tuition and fees, room & board, computers and computer software, and equipment and supplies that are required for attendance or enrollment at an institution of higher education. The funds may be used at any post-secondary institution, domestic and abroad, that accepts federal financial aid.

Marketing and advertising should be directed to both existing and prospective TNStars® participants to assist individuals in meeting their college savings goals by choosing the TNStars® College Savings 529 Program. While there is an awareness component of marketing and advertising TNStars®, the primary focus of the efforts should be toward conversions of prospective participants to contribute to new accounts and increased savings contributions by existing participants into their TNStars® accounts. Participants in the plan may contribute by check, electronic funds transfer, automatic contributions, rollovers from other 529 college savings plans, transfers from a UTMA/ UGMA account, transfers from a Coverdell Education Savings Account, transfers from the redemption of Qualified US Savings Bonds, gifts by third-party contributors such as family and friends, and payroll deduction from employers.

Through this APS, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give all qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

II. APS COMMUNICATIONS

Unauthorized contact about this APS with employees or official of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.

The State has assigned the following APS identification number that must be referenced in all communication regarding this APS: APS #30901-31917. Potential Respondents to this APS must direct communications relating to this APS to the following person designated as the APS Coordinator:

Dawn Rochelle
APS Coordinator
State of Tennessee, Treasury Department
14th Floor, Andrew Jackson State Office Building
502 Deaderick Street, Nashville, TN 37243-0225
Phone: (615) 253-8770 Fax: (615) 770-7504
Email: Dawn.Rochelle@tn.gov

Notwithstanding the foregoing, prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran-owned, and small businesses as well as general, public information relating to this APS (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information; and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disability Act of 1990, and associated federal regulations:

Greg Cason
Director of Human Resources
State of Tennessee, Department of Treasury
13th floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, TN 37243
Phone: (615) 741-4915
Fax: (615) 741-0996
E-mail: Greg.Cason@tn.gov

Only the State's official, written responses and communications with Respondents are binding with regard to this APS. Oral communications between a State official and one or more Respondents are unofficial and non-binding.

Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a

communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.

The State will convey all official responses and communications related to this APS to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to APS Section VI).

The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this APS. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.

Each prospective Respondent must carefully review this APS, including but not limited to, attachments, the APS Attachment H, *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments"). **All comments as well as proposed revisions to the provisions in the *Pro Forma* Contract must be done during this Questions and Comment period for the State's consideration and response.**

Any prospective Respondent having questions and comments concerning this APS must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the APS Section VIII, Schedule of Events.

Protests based on any objection to the APS shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

III. NONDISCRIMINATION

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this APS or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this APS shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

IV. ASSISTANCE TO RESPONDENTS WITH A HANDICAP OR DISABILITY

Potential Respondents to this APS who have a handicap or disability may receive accommodation relating to the communication of this APS and participating in the APS process. Potential Respondents may contact the APS Coordinator to request such reasonable

accommodation no later than the Disability Accommodation Request Deadline detailed in the Section VIII, Schedule of Events.

V. PRE-RESPONSE TELECONFERENCE

A Pre-Response Teleconference will be held at the time and date detailed in Section VIII, Schedule of Events, as set forth below. Participating in the Teleconference is not mandatory. To participate in the Teleconference, contact Dawn Rochelle, at 615-253-8770 or via email at Dawn.Rochelle@tn.gov for further instructions. The purpose of the Teleconference is to discuss the APS and the scope of services requested by the Department of Treasury. The Department of Treasury will entertain questions; however, potential Respondents must understand that the response to any question by the Department at the Pre-Response Teleconference will be unofficial and non-binding. Any consultants as may be selected by the State may also be in attendance at the teleconference to provide assistance to the State.

Potential Respondents may also submit questions concerning the APS in writing and must submit them prior to the Written Comments Deadline date detailed in the Section VIII, Schedule of Events, below. The Department of Treasury will send the official response to questions to potential Respondents who submit a Notice of Intent to Respond as indicated in Section VI below and on the date detailed in the Section VIII, Schedule of Events.

VI. NOTICE OF INTENT TO RESPOND

Before the Notice of Intent to Respond deadline detailed in Section VIII, Schedule of Events, below, potential Respondents should submit to the APS Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- The business or individual's name (as appropriate)
- A contact person's name and title
- The contact person's mailing address, telephone number, facsimile number, and e-mail address

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response; however, it is necessary to ensure receipt of any APS amendments, notices and other communications relating to this APS.

VII. RESPONSE DEADLINE

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the Section VIII, Schedule of Events. A Respondent must respond, as required, to this APS as may be amended. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response.

Each response to this APS must consist of a Technical Proposal (Attachments A and B) and a Cost Proposal (Attachment E).

It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

VIII. APS SCHEDULE OF EVENTS

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. State releases APS		May 2, 2016
2. Disability Accommodation Request Deadline	2:00 pm	May 5, 2016
3. Pre-Response Teleconference	10:00am	May 6, 2016
4. Notice of Intent to Respond Deadline	2:00 pm	May 9, 2016
5. Deadline to Submit Written Questions and Comments	2:00 pm	May 12, 2016
6. State's Response to Written Questions & Comments		May 19, 2016
7. Deadline to Submit Response to APS	2:00 pm	May 26, 2016
8. State's Completion of APS Evaluations; selection of up to 5 finalists		June 13, 2016
9. State Notifies and Schedules Finalists Interviews		June 15, 2016
10. Finalists Interviews (Second day of interviews if more than three (3) finalists selected.		June 28, 2016 & June 29, 2016
11. Sealed Cost Proposals Submitted	3:00 p.m.	June 29, 2016
12. State's Completion of Interview Evaluations		July 11, 2016
13. Opening of Cost Proposals		July 12, 2016
14. Negotiations		July 14, 2016 to July 21, 2016
15. Evaluation Notice Released and APS Files Opened for Public Inspection		July 26, 2016
16. Deadline to file an objection with Treasurer and end of open file period	3:00 pm	August 2, 2016
17. Contractor Signature Deadline		August 5, 2016

The State reserves the right, at its sole discretion, to adjust the APS Schedule of Events, as it deems necessary. Any adjustment of the Schedule of Events will be communicated to potential Respondents from whom the State has received a Notice of Intent to Respond (as described in Section VI. above).

IX. RESPONSE DELIVERY AND FORMAT

A Respondent must ensure that the State receives a response to this APS no later than the Response Deadline time and date detailed in the Section VIII., Schedule of Events at the following address:

Dawn Rochelle
APS Coordinator
State of Tennessee, Treasury Department
14th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, TN 37243

Each response to this APS must consist of a Technical Proposal (Attachments A, B and C) and a Cost Proposal (Attachment E). A Respondent should submit one (1) hard copy original and one (1) copy of its Technical Proposal in the form of a digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc in a sealed package that is clearly marked: **“Technical Proposal in Response to APS 30901-31917”**. A Respondent must submit one (1) hard copy original and one (1) copy of its Cost Proposal in a digital document in “PDF” form properly recorded on its own otherwise blank, standard CD-R recordable disc to the State in a separate, sealed package that is clearly marked: **“Cost Proposal in Response to APS 30901-24614 – Do Not Open.”** If a Respondent encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Respondent must clearly mark the outermost package: **“Contains Separately Sealed Technical and Cost Proposals for APS 30901-31917.”**

The Respondent should address all items in **Attachments A, B, and C**, and provide, in sequence, the information and documentation as required (referenced with the associated item references). Additional data regarding the plans is included in subsequent Attachments.

A Respondent must not submit more than one (1) Technical Response and one (1) Cost proposal in response to this APS, except as expressly requested by the State in this APS. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.

The State will not pay any costs associated with the preparation, submittal or presentation of any response.

A Cost Proposal must be recorded on an exact duplicate of the APS Attachment E, Cost Proposal & Scoring Guide.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

X. RESPONSE AND RESPONDENT PROHIBITIONS

A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this APS or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this APS or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.

A response must not propose alternative goods or services (i.e., offer services different from those requested and required by this APS) unless expressly requested in this APS. The State may consider a response of alternative goods or services to be non-responsive and reject it. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.

A Respondent must not provide, for consideration in this APS process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.

A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This Restriction does not, however, prohibit different Respondents from offering the same subcontractor as part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this APS:

An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

XI. RESPONSE ERRORS AND REVISIONS

A Respondent is responsible for any and all response errors and omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the APS Section VIII, Schedule of Events unless such is formally requested in writing, by the State.

XII. RESPONSE WITHDRAWAL

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the APS Section VIII Schedule of Events by submitting a written requested signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

XIII. ADDITIONAL SERVICES

If a response offers goods or services in addition to those required by and described in this APS, the State, at its sole discretion, may add such services to the contract awarded as a result of this APS. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this APS and must not record any rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

XIV. INTERVIEWS

The APS Coordinator will invite each of the finalists for an interview. Finalists will be selected in accordance with the process outlined in Section XXVII, Evaluation Process. The APS Coordinator will randomly schedule interviews during the period indicated in Section VIII Schedule of Events. When the interview date and time has been determined, the APS Coordinator will contact finalists with the relevant information as indicated in Section VIII, Schedule of Events.

Interviews will be open only to the invited finalist, evaluation team members, the APS Coordinator, and any consultants or State employees that may be selected by the State to provide assistance to the evaluation team.

XV. APS AMENDMENT

The State reserves the right to amend this APS at any time, provided that it is amended in writing; however, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the proposal deadline and revise the APS Schedule of Events if deemed appropriate. If an APS amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond as referenced in section VI of this APS. A proposal must respond, as required, to the final APS (including its Attachments) as may be amended.

XVI. APS CANCELLATION

The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this APS at any time.

XVII. STATE RIGHT OF REJECTION

Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals. The State may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this APS. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, a proposal's minor variances from full compliance with this APS. If the State waives variances in a proposal, such waiver shall not modify the APS requirements or excuse the Respondent from full compliance with such, and the State may hold any resulting Contractor to strict compliance with this APS.

XVIII. ASSIGNMENT AND SUBCONTRACTING

The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this APS without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment. If a Respondent intends to use subcontractors, the proposal in response to this APS must specifically identify the scope and portions of the work each subcontractor will perform. Subcontractors identified within a proposal in response to this APS will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract. The Contractor resulting from this APS may only substitute another subcontractor for a proposed subcontractor at the discretion of the State and with the State's prior, written approval. Notwithstanding any State approval relating to subcontracts, the Contractor resulting from this APS will be the prime contractor and will be responsible for all work under the Contract.

XIX. RIGHT TO REFUSE PERSONNEL

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing service in the

performance of a contract resulting from this APS. The State will document in writing the reason(s) for any rejection of personnel.

XX. INSURANCE

At any time, the State may require the Contractor resulting from this APS to provide a valid, Certificate of Insurance indicating current insurance meeting minimum requirements as may be specified by this APS. A failure to provide said documentation will be considered a material breach and grounds for contract termination.

XXI. PROFESSIONAL LICENSURE AND DEPARTMENT OF REVENUE REGISTRATION

All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a proposal in response to this APS, shall be properly licensed to render such opinions. Before the Contract resulting from this APS is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.

Before the Contract resulting from this APS is signed, the apparent successful Respondent must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

XXII. CONTRACT APPROVAL AND CONTRACT PAYMENTS

This APS and its contractor selection do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated proposal or any other Respondent. State obligations pursuant to a contract award shall commence only after the contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee. The State shall not be liable for payment of any type associated with the Contract resulting from this APS (or any amendment thereof) or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before the Contract start date or after the Contract end date. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this APS (refer to APS **Attachment H**, Pro Forma Contract, Section C).

If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of services or items to be delivered to the State as a component of contract performance or otherwise provides for all reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amount(s) which it determines did not result from a reasonably competitive purchase or do not represent reasonable, necessary, and actual costs.

XXIII. CONTRACTOR PERFORMANCE

The Contractor resulting from this APS will be responsible for the completion of all service set out in this APS (including attachments) as may be amended. All service is subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that service is progressing and being performed in compliance with the Contract and the Contractor must cooperate with such efforts.

XXIV. SEVERABILITY

If any provision of this APS is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining APS terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the APS did not contain the particular provision held to be invalid.

XXV. DISCLOSURE OF RESPONSE CONTENTS

All materials submitted to the State in response to this APS shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

The State will hold all response information, including both technical and cost information, in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.

Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and any associated materials will become subject to public inspection pursuant to Tennessee Code Annotated, Section 10-7-504(a)(7).

XXVI. EVALUATION CATEGORIES AND MAXIMUM POINTS

The State will consider qualifications, experience, technical approach, cost, and interview in the evaluation of proposals and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each apparently responsive proposal.

EVALUATION CATEGORY		MAXIMUM POINTS POSSIBLE
1.	Technical Proposal – based on Attachment B	15
2.	Technical Proposal – based on Attachment C	60
3.	FINALIST ONLY Interview	15
4.	FINALIST ONLY Cost Proposal	10

XXVII. EVALUATION PROCESS

The proposal evaluation process is designed to award the contract to the best evaluate\ Respondent responding to an Alternate Procurement Solicitation (“APS”) that includes a technical proposal and questionnaire; and for finalists, a cost proposal and an interview. The process is intended to award the contract not necessarily to the Respondent offering the lowest cost for each individual service provided, but rather to the Respondent meeting the minimum, mandatory requirements, that offers the best combination of attributes based upon the evaluation criteria. (“Responsive Respondent” is defined as a Respondent that has submitted a response that conforms in all material respects to the APS. “Responsible Respondent” is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

The Department of Treasury’s Procurement Coordinator will serve as the APS Coordinator and will manage the procurement process, including compiling evaluation scores and/or rankings and maintaining evaluation records. Respondents will submit a Technical Proposal which will consist of the detailed responses to the Questionnaire issued by the Department of Treasury. The Questionnaire will include minimum, mandatory requirements, and will ask Respondents for specific responses in the areas of qualifications and experience and technical approach to providing the services requested.

Respondents who intend to submit Technical Proposals are encouraged to submit a Notice of Intent to Respond (in the form of a simple e-mail or other written communication) prior to the Notice of Intent to Respond deadline in the Schedule of Events. The Notice of Intent to Respond does not create an obligation and is not a requirement for responding, but it will be necessary to ensure receipt of Questionnaire amendments, notices and other communications relating to the APS. The Department of Treasury will send official responses to written questions and comments from potential Respondents who file the Notice.

Prior to the deadline for the Notice of Intent to Respond, the Department of Treasury will give potential Respondents the opportunity to participate in an optional Pre-Response Teleconference to discuss the Questionnaire and the scope of services requested. Any responses the Department gives at the Pre-Response Teleconference are not binding unless the Department provides such responses in writing and makes such responses available publicly.

The State will not accept proposals submitted after the time and date for the Deadline to Submit Response to APS, as provided on the APS Schedule of Events. The Proposal Evaluation Team will be comprised of at least three (3) State employees designated by the Treasurer. Before the cost proposals are opened, the Proposal Evaluation Team will review the Technical Proposal record and any other available information pertinent to whether or not each Respondent is responsive and responsible. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Proposal or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the proposal identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State. If the Proposal Evaluation Team identifies any Respondent that appears not to meet the responsive and responsible thresholds, the team members will fully document the determination and notify the APS Coordinator immediately.

In the event that the State receives only one proposal by the proposal deadline, it may elect to (i) cancel the APS provided that the Technical Proposal received is not opened; or (ii) open the Technical Proposal to determine whether it meets the minimum, mandatory requirements. If the proposal does meet the minimum, mandatory requirements, the State may elect to evaluate other relevant information received from the Respondent, to determine if contracting with the Respondent is in the best interests of the participants in the 529 college saving plan. If the State determines that the Technical Proposal does not meet the minimum, mandatory requirements, and/or contracting with the Respondent is not in the best interests of plan participants, the State may cancel the APS.

The Solicitation Coordinator will review each Technical Response to determine compliance with APS Attachments A and B as well as APS Technical Response & Evaluation Guide, Attachment C. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets APS requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the APS and reject it.

Proposal Evaluation Team members will independently evaluate each Technical Proposal that meets the responsive and responsible threshold requirements of the APS against the mandatory

requirements contained in Attachments A and B, and the evaluation criteria in the APS contained in the Technical Response & Evaluation Guide (Attachment C), rather than against other proposals. The overall scoring will consist of three parts: the Technical Proposal, Interview, and Cost Proposal. The Technical Proposal will consist of **Attachments A, B and C**. **Attachment A** is a list of mandatory requirements and will be evaluated as Pass/Fail. The Respondent must provide responses to the questions contained in **Attachments B and C** which will be weighted as indicated by the total number of points available for each category. These numbers will be added together to get a total score for the Technical Proposal. The APS Coordinator will calculate the average of the Proposal Evaluation Team member scores and record each average as the proposal score for the respective Technical Proposal section. The Technical Proposal

The APS Coordinator will identify no less than three (3) (if at least three (3) are submitted), and at the State's discretion, up to five (5), Proposals, that have received the highest evaluations for Technical Proposal ("Respondent Finalist"). The APS Coordinator shall notify each Respondent Finalist that (i) it is to submit a Cost Proposal by the date shown, and (ii) that it shall schedule an Interview. The interview may be conducted in-person or by teleconference at the discretion of the State. The APS Coordinator will also provide instructions to each Respondent Finalist for submitting its sealed cost proposal.

The Proposal Evaluation Team will conduct the Interviews with each Respondent Finalist and shall be authorized to ask all questions it deems necessary. The Proposal Evaluation Team will ask standard questions of each Respondent Finalist, but it has the discretion to ask questions of one (1) or more Respondent Finalists that are not asked of the others in seeking clarification or further detail on items discussed, and has the discretion to hold Interviews of varying times with each Respondent as it deems necessary. The Proposal Evaluation Team will assess each Interview on a scale worth fifteen (15) points. The Treasurer may, at his or her discretion, elect to participate in the interview process and observe the evaluation process but will not participate in the assessment. The APS Coordinator will compile and record each Interview Evaluation assessment.

The APS Coordinator will open for evaluation the Cost Proposal (**Attachment E**) of each Respondent Finalist identified and will calculate and record each Cost Proposal score after Interviews are conducted. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

For each Respondent Finalist, the APS Coordinator will compile the Technical Proposal section assessments, the Cost Proposal score, and the Interview Evaluation assessment and record the results as the total score and/or ranking for the subject Proposal.

The State may elect to negotiate by requesting revised Cost Proposals from Respondent Finalists; however, the State reserves the right to award a contract on the basis of initial proposals received. Therefore, each proposal should contain the Respondent Finalist's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas

of a proposal that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications and/or requirements. The State may seek to clarify those identified issues during negotiations. All Respondent Finalists will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual Respondent Finalist pricing. During target price negotiations Respondent Finalists are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted by the Solicitation Coordinator in a manner that supports fairness in proposal improvement. Note that each clarification sought by the State may be unique to an individual Respondent Finalist.

XXVIII. CONTRACT AWARD PROCESS

The APS Coordinator will submit the Proposal Evaluation Team determinations and proposal scores to the Treasurer for consideration along with any other relevant information that might be available and pertinent to contract award.

The Treasurer will determine the apparent best-evaluated proposal of the Finalist receiving the highest evaluation. If the Treasurer determines that a Respondent other than the one receiving the highest evaluation has presented the apparent best-evaluated proposal, such determination with supporting justification will be in writing.

After making the determination of the apparent best-evaluated Respondent, the State will release a Notice of Intent to Award to such Respondent and will open the files for public inspection. The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondents or any other Respondent. Any aggrieved actual Respondent will have seven (7) days from the date of the release of the Notice of Intent to Award to protest the award of the Contract by filing a written protest with the Treasurer. The protesting party will have an opportunity for one (1) informal appeal to the Treasurer or his or her designee (provided such designee did not serve on the Proposal Evaluation Team). This informal appeal shall be concluded within fourteen (14) days of the request for appeal. There will be no further administrative appeals.

The Respondents identified as offering the apparent best-evaluated responses must sign a contract drawn by the State pursuant to this APS. The contract shall be substantially the same as the APS Attachment H, Pro Forma Contract. The Respondents must sign the contract by the Contractor Signature Deadline detailed in the APS Section VIII, Schedule of Events. If the Respondent fails to provide the signed contract by the deadline, the State may determine that the Respondent is non-responsive to this APS and reject the response. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiations prior to contract signing and, as a result, revise the Pro Forma contract terms and conditions or performance requirements in the State's best interests; provided that, such revision of terms and conditions or performance requirements shall not materially affect the basis of response evaluations or negatively impact the competitive nature of the APS and contractor selection process. If

contract negotiations with the apparent best-evaluated Respondent fail, then the Treasurer has the right, at his or her sole discretion, to pursue negotiations with the next apparent best-evaluated Respondent; or to cancel or reissue the APS.

MANDATORY TECHNICAL REQUIREMENTS Form for A.1

APS# 30901-31917 STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by APS Attachment A., Technical Response & Evaluation Guide, Section A, Item A.1.).

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the APS.
2. The Respondent will provide all services as defined in the Scope of Services of the APS Attachment H, *Pro Forma* Contract for the total contract period.
3. The Respondent, except as otherwise provided in this APS, accepts and agrees to all terms and conditions set out in the APS Attachment H, *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the APS shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Respondent will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this APS is accurate.
7. The response submitted to this APS was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this APS or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this APS shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the APS.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this APS and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT

SIGNATURE:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

**RESPONDENT FEDERAL EMPLOYER IDENTIFICATION NUMBER
(or SSN):**

ATTACHMENT A - MANDATORY TECHNICAL REQUIREMENTS CHECKLIST

The following services are required. Please confirm your ability to provide these services with a Y or N. If the answer is N, please provide a clear and concise explanation as to why your firm can not offer the requested service. **Attachment A** will be evaluated on a **pass/fail basis**.

	Function/Service	Service Provided Y or N
Marketing and Advertising		
A.1	Provide the Statement of Certifications and Assurances completed and signed by an individual empowered to bind the Respondent to the provisions of this APS and any resulting contract. The document must be signed without exception or qualification. If the signatory is not the Respondent (if an individual) or the Respondent's company President or Chief Executive Officer, this document <u>must</u> attach evidence showing the individual's authority to bind the Respondent.	
A.2	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict.	
A.3	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
A.4	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
A.5	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	

ATTACHMENT B: TECHNICAL RESPONSE & EVALUATION GUIDE

GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to **Attachment B—** General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent’s form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this APS.
	B.5.	Describe the Respondent’s number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent’s employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this APS, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	<p>Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this APS or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this APS.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>
	B.10.	<p>Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this APS.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this APS (<i>e.g.</i> , prior experience, training, certifications, resources, program and quality management systems, <i>etc.</i>).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		required by this APS.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this APS along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	<p>. Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this APS, and if so, detail:</p> <p>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</p> <p>(b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u></p> <p>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this APS.</p>
	B.15.	<p>Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (<i>i.e.</i>, ethnicity, gender, Tennessee service-disabled);</p> <p>(iii) contractor contact name and telephone number.</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this APS. Please include the following information:</p> <ul style="list-style-type: none"> (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors. <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=t n&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract’s scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. <p>Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.</p>
	B.17	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this APS and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at APS Attachment F. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent’s name to the standard reference questionnaire at APS Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>each reference.</p> <p>(c) Instruct the reference to:</p> <ul style="list-style-type: none"> (i) complete the reference questionnaire; (ii) sign and date the completed reference questionnaire; (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided; (iv) sign his or her name in ink across the sealed portion of the envelope; and (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response). <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. The State is under <u>no</u> obligation to clarify any reference information.
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>
	B.19.	Provide documentation as proof of current subscription to Neilson/Arbitron Rating service.
SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): <i>(maximum possible score =15)</i>		
<i>State Use – Evaluator Identification:</i>		

ATTACHMENT C: QUESTIONNAIRE

In providing your company's responses to the questions below restate each question in bold face type with your response directly below. Your company's proposal, and consequently your responses to the following questions, will be incorporated as part of the contract between your company and the State. For proposals made as joint ventures, requested information should be provided for all companies that will be a party to the proposed services.

I. Technical Qualifications, Experience & Approach Items.

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates your team's understanding of TNStars®' requirements, objectives and positioning as it relates to college savings and college savings programs and plans.		5	
	C.2.	Provide a narrative and/or examples of your team's knowledge and experience in developing and executing a marketing and advertising plan for a State's 529 college savings plan or any other		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		financial product.			
	C.3.	Provide a narrative and examples of creative products, ideas and initiatives that demonstrate your team’s ability to communicate strategically to college savers. Additionally explain how these examples directly address the targeted audiences.		10	
	C.4.	Provide examples of past marketing and advertising campaigns your team has developed and implemented that reflect your team’s level of creativity and ability to increase business. Examples should highlight your team’s experience and strategy for completing objectives in both traditional and digital advertising and include quantifiable measurements of results.		10	
	C.5.	Provide a narrative of your team’s experience with Tennessee media buys within the past five (5) years. This should include the number volume of media placed in Tennessee demonstrating your team’s experience in placing and managing media buys.		5	
	C.6.	Provide a narrative that demonstrates your team’s ability to collect data, obtain prospect lists, and identify target audiences based on demographic and behavioral attributes. List any sources used by your team to obtain such data.		10	
	C.7.	Demonstrate your team’s abilities in web development/design and data analytics.		10	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.8.	Provide a narrative that demonstrates how your team quantifies and reports the success of specific campaigns. Identify the planning and reporting tools and resources that are used. Provide illustrations that support the response, including but not limited to, an example report(s).		5	
	C.9.	Assuming an annual budget of \$500,000, demonstrate what types of creative products, ideas and initiatives your team would utilize. Please include a schedule of proposed deliverables and the proportion of the budget allocated to each.		15	
	C.10.	Marketing and advertising efforts may be directed to current account owners, prospective account owners, and financial professionals. Provide a narrative that describes the messaging that your firm would provide to each unique audience and the medium in which the messaging would be provided. Also, without stating specific costs, explain the proportion of the overall budget that will be directed to each audience.		10	
	C.11.	Describe how your team would work directly with the TNStars® Program. This should include an outline of your process for establishing a working relationship to communicate and collaborate with TNStars® staff.		5	
	C.12.	Describe the key performance indicator		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		that your team typically focuses on for client work and how you will report on TNStars®' progress month-to-month.			
	C.13.	Describe what you intend to accomplish in the first ninety (90) days of work for TNStars®.		5	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>					Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>
Total Raw Weighted Score <hr/> Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>			X 60 <i>(maximum possible score)</i>	= SCORE:	
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

ATTACHMENT D: INTERVIEW RESPONSE AND EVALUATION GUIDE

The Respondent must address ALL Oral Presentation Items (below).

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the presentation response to each item. Each evaluator will use the following whole-number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section score as indicated.

INTERVIEW		Item Score	Evaluation Factor	Raw Weighted Score
D.1	Develop a presentation illustrating how the agency would allocate \$500,000 over the course of one year to develop and implement a campaign that drives new accounts and increased assets in TNStars®.		57	
D.2	Explain how the Respondent collects data, obtains prospect lists, and identifies target audiences based demographic and behavioral attributes. Additionally, explain the Respondent's process for quantifying and reporting the success of specific campaigns. Identify the planning and reporting tools and resources that are used. Provide illustrations that support the response, including but not limited to, an example report(s).		43	
Total Raw Weighted Score (<i>sum of Raw Weighted Scores above</i>): The Solicitation Coordinator will use this sum and the formula below to calculate the score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.				
$\frac{\text{total raw weighted score}}{\text{maximum possible raw weighted score}} \times 15 = \text{SCORE:}$ <p>(i.e., 5 x the sum of item weights above) (maximum section score)</p>				
State Use – Evaluator Identification:				
State Use – Solicitation Coordinator Signature, Printed Name & Date:				

ATTACHMENT E: COST PROPOSAL AND SCORING GUIDE

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the APS Attachment F., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this APS. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to APS Attachment F), “The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.”

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this APS and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual’s authority to legally bind the Respondent.

Respondent should only fill out only areas where the client will be billed for services. If the Respondent does not charge for additional services, please leave blank or fill with “\$0”.

The Contract’s maximum liability will be set at \$1.5 million dollars. While the cost proposal will be a factor for consideration in the award of this Contract, it will not determine the Contract maximum liability, which will be set at \$1.5 million dollars. The cost proposal will be used to determine the individual value of each service to determine what services that State would receive for a maximum liability of \$1.5 million dollars.

RESPONDENT SIGNATURE:	
PRINTED NAME & TITLE:	
DATE:	

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description TABLE A	Proposed Cost	TABLE A	
		State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
Banners, Signage Booths, etc.	\$ At Cost- No Mark-up	2	
Talent and Media Production	\$ At Cost- No Mark-up	2	
Digital and Search Marketing	\$ / Hour	2	
Research and Analytic Services	\$ / Hour	2	
Account Management	\$ / Hour	1	
Art Direction	\$ / Hour	1	
Copywriting	\$ / Hour	1	
Creative Direction	\$ / Hour	1	
Digital Services	\$ / Hour	1	
Illustration	\$ / Hour	1	
Production Supervision	\$ / Hour	1	
Public Relations	\$ / Hour	1	
Graphic Design	\$ / Hour	1	
Direct Mail Services (in additional to the items above)	\$ / Hour	1	
Additional Services at the request of the State pursuant to the Scope of Services within the <i>Pro Forma</i> Contract	\$ / Hour	1	
EVALUATION COST AMOUNT (sum of evaluation costs above):			

The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
lowest evaluation cost amount from <u>all</u> proposals for TABLE A			
evaluation cost amount being evaluated TABLE A	x 5 (maximum TABLE A score)	= TABLE A SCORE:	

TABLE B

Cost Item Description TABLE B	Proposed Cost	TABLE B	
		State Use Only	
		Evaluati on Factor	Evaluation Cost (cost x factor)
Media Buys (Agency Commission)	_____ % Agency Commission on broadcast invoices	2	
EVALUATION COST AMOUNT (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
lowest evaluation cost amount from <u>all</u> proposals for Table B			
evaluation cost amount being evaluated for Table B	x 5 (maximum TABLE B score)	= TABLE B SCORE:	
COST PROPOSAL SCORE= Sum of TABLES "A" PLUS "B" =TOTAL SCORE:			
State Use – Solicitation Coordinator Signature, Printed Name & Date:			

ATTACHMENT F: APS# 30901-31917 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Alternative Procurement Solicitation (APS) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) **What goods or services does/did the reference subject provide to your company or organization?**

(4) **What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?**

Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery does/did the reference subject excel?
- (9) In what areas of goods or service delivery does/did the reference subject fall short?
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

- (11) Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

- (12) Would you contract again with the reference subject for the same or similar goods or services?

Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

(must be the same as the signature across the envelope seal)

DATE:

ATTACHMENT G: SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE ATTACHMENT B (maximum: 15)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH ATTACHMENT C (maximum: 60)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
INTERVIEW (maximum: 15)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: 10)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)						
<i>Solicitation Coordinator Signature, Printed Name & Date:</i>						

ATTACHMENT H: PRO FORMA CONTRACT

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Treasury (“State”) and **Contractor Legal Entity Name** (“Contractor”), is for the provision of marketing services for the State’s TNStars® College Savings Plan pursuant to Section 529 of the Internal Revenue Code (“Plan”), as further defined in the "SCOPE." State and Contractor may be referred to individually as a “Party” or collectively as the “Parties” to this Contract.

The Contractor is

Contractor Place of Incorporation or Organization:

Contractor Edison Registration ID #

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. The Contractor shall provide the State with a comprehensive, strategic and innovative communications and promotional campaign for the Plan in an effort to accomplish, including, but not limited to, the following: creating awareness of the purpose of the Plan; communicating how the Plan can assist families in preparing for higher education expenses; highlighting the tax and incentive advantages of the Plan; and communicating how the Plan distinguishes itself from other college savings §529 plans. Toward that end, the Contractor shall develop, create and design a unique message tailored to the Plan that communicates the distinct advantages that the Plan can offer across all platforms, including, but not limited to, print, television, radio, community events, social media, and internet. The Contractor shall accomplish these goals by performing the following:

a. Marketing Strategy and Initiatives. The Contractor, at the direction of and in consultation with the State, shall develop a marketing strategy for the Plan. The Contractor shall also develop promotional and informational material for the Plan in connection with the marketing strategy; the material shall only be disseminated by the Contractor upon receiving the State’s written permission. The Contractor shall work with the State to ensure that the Plan’s marketing and informational materials are in compliance with the Municipal Securities Rulemaking Board’s (“MSRB”) rules, including, but not limited to, MSRB Rule G-21, as well as all other applicable federal and state laws, rules and guidance relative to the marketing and sale of securities. The Contractor shall perform the following marketing initiatives, at the direction of and in consultation with the State, including, but not limited to:

i. Write, produce and schedule promotions in print, radio, television and electronic media;

ii. Develop a marketing approach that promotes saving for higher education generally and specifically encourages saving for higher education expenses in the Plan. The strategy shall include the promotion of the following, including, but not limited to, utilizing the Plan’s gifting platform to contribute to a college savings account, applicable incentives, direct

deposit offered by employers for college savings contributions, and the investment advisor portal;

iii. Design, draft and print brochures, postcards, flyers, advertisements and web designs to promote information about the Plan purpose, achievements and advantages;

iv. Develop sweepstakes and incentive promotions to be implemented by the State to encourage savings in the Plan;

v. Develop partnerships, sponsorships or alliances with other individuals or entities (including, but not limited to Chambers of Commerce, financial institutions, educational organizations, government agencies and any other corporations, partnerships, and associations) to market the Plan, encouraging the entities to allow its employees to make contributions to a Plan account through direct deposit; and

vi. Develop and implement a marketing strategy that encourages continued contributions in the Plan by account owners and family members for those accounts established as of the date of this Contract .

b. Research and Analytics. In consultation with and at the direction of the State, the Contractor shall perform ongoing research to determine a creative strategy and to identify target audiences for marketing and public relations efforts to promote and encourage participation in the Plan. Such research shall include, but not be limited to, surveys, focus groups, census data, income by zip code analysis, and Tennessee savings rate data. The Contractor shall also utilize appropriate unique URL's, phone numbers, or other methods deemed appropriate to track activity and the effectiveness of marketing and advertising efforts and campaigns. The Contractor shall evaluate the Plan's image and brand, conduct an assessment of consumer perceptions of the Plan's branding and provide recommendations regarding whether or not a new or updated image or brand is needed for the Plan's marketing initiatives. To the extent that the market research indicates that new or revised branding is needed for the Plan, the Contractor shall develop a new brand and themes for the State's consideration and with the written approval of the State, shall assist the State in creating updated or revised branding for the Plan.

A.3. Copywriting. The Contractor shall obtain the necessary and appropriate copyrights on all of the material the Contractor creates and produces for the State under the terms and provisions of this Contract. The Contractor is responsible for the payment of any costs, expenses or fees associated with the copyright of any materials and shall be reimbursed by the State for the cost, expenses or fees pursuant to Section C.3.b. in the Contract.

A.4. Direct Mailing. At the direction of the State, the Contractor shall mail (by hard copy or electronic means) the marketing materials that it creates and produces for the State under the terms and provisions of this Contract. The Contractor is responsible for the payment of any costs, expenses or fees associated with the direct mailing of any materials

A.5. Additional Marketing, Advertising and Research Services. In the event that the State requests that the Contractor perform additional marketing, advertising and research services for the Plan not specifically addressed in Section A of this Contract, yet still falling under the Contract's Scope of Services, the State shall request that these additional services in writing to the Contractor detailing the services requested and time frame in which the State requests the services be provided. Payment for these additional services will be done in accordance with Section C.3.b. in the Contract.

- A.6. Monitoring and Reporting. On an ongoing basis, the Contractor shall develop a monitoring system and performance measures to assess the effectiveness of the various marketing methods, efforts and campaigns utilized to market the Plan. The Contractor shall evaluate the effectiveness of the marketing, advertising and promotion campaigns systematically based on research and analytics, and at least annually or upon the State's request, provide a written report to the State of its findings. The Contractor shall also provide a summary of activity after each marketing campaign and detailed reports at increments agreed upon by the Contractor and the State, which may include, but is not limited to, weekly, monthly and/or quarterly reports. The Contractor's reports shall specifically include an evaluation of the effectiveness of each marketing campaign. The Contractor shall provide at least bi-weekly report of digital marketing. The Contractor shall provide proof of performance affidavits as appropriate for campaigns and copies of subcontractor or vendor invoices for marketing campaigns. The Contractor shall also provide progress reports in accordance with C.3.c. of this Contract. The Contractor is responsible for the printing and delivery of all reports developed pursuant to this Section.
- A.7. Account Management Personnel. Upon the mutual agreement of the parties, the parties shall determine the individuals employed by the Contractor who shall be assigned as the Contractor's project team members and key people assigned to deliver the goods or services under the terms of this Contract. Should any of the project team member or key persons mutually agreed upon by the parties be removed from the project team or leave the Contractor's employment during the term of the Contract, the State reserve the right to: (1) approve the appointment of the person designated to replace the team members or key people ; or (2) immediately terminate the Contract pursuant to Section D.5. in the Contract. Upon such termination, the Contractor shall have no right to any actual, general, specific, incidental, consequential or any other damages whatsoever of any description or amount as a consequence of the State terminating the Contract under the provisions of this Section.
- A.8. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.
- Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.
- Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.
- If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.
- A.9. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on **DATE** (“Effective Date”) and extend for a period of thirty-six (36) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million five hundred thousand dollars (\$1,500,000.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Media Buys (Agency Commission)	_____ % of Agency commission on broadcast invoices
Banners, Signage, Booths	\$
Talent and Media Production	\$
Digital and Search Marketing	\$_____ per hour
Research and Analytic Services	\$_____ per hour
Account Management	\$_____ per hour
Art Direction	\$_____ per hour
Copywriting (including any fees to copyright material)	\$_____ per hour
Creative Direction	\$_____ per hour
Digital Services	\$_____ per hour
Illustration	\$_____ per hour
Production Supervision	\$_____ per hour

Public Relations	\$_____ per hour
Graphic Design	\$_____ per hour
Direct Mail Services (including any costs to mail material)	\$_____ per hour
Additional Services at the request of the State pursuant to Section A.5. in the Contract.	\$_____ per hour

- c. The Contractor shall submit monthly invoices to the State, each of which shall be accompanied by a detailed progress report addressing all of the Contractor's activities performed pursuant to the Contract for the preceding month.
- d. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

LaKesha Page
 Director of College Savings
 Tennessee Department of Treasury
 Andrew Jackson Building, 15th Floor
 502 Deaderick Street
 Nashville, Tennessee 37243-0206

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: Tennessee Department of Treasury, Baccalaureate Education System Trust;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

- b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

LaKesha Page

Director of College Savings
Andrew Jackson Building, 15th Floor
502 Deaderick Street
Nashville, Tennessee 37243
LaKesha.Page@tn.gov
Telephone # (615) 532-5888
FAX # (615) 734-6467

The Contractor:

Contractor Contact Name & Title

Contractor Name

Address

Email Address

Telephone # Number

FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to

request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Contract Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in

the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated

damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.20. Insurance. Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance’s expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance (“TDCI”) and signed by an authorized representative of the insurer. The COI shall list each insurer’s national

association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed

under an insured contract (including the tort liability of another assumed in a business contract).

- 2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

- i. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
- ii. Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
- iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

d. Automobile Liability Insurance

- i. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- ii. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workarounds plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this

Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract.

Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes **Contract Attachments 1 and 2**;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.3. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).
- E.4. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

E.7. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.8. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the Treasury Department or to any member of a Board, Commission or Committee administratively attached to the Treasury Department that would violate the Treasury Department's Gifts and Solicitations Policy, attached hereto as **Contract Attachment "2"**.

E.9. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

CONTRACT ATTACHMENT 2

TREASURY DEPARTMENT GIFTS AND SOLICITATION POLICY

No employee or any member of a Board, Commission or Committee administratively attached to the Department shall solicit, accept or agree to accept, directly or indirectly, on behalf themselves or their immediate family, any gift in violation of state law including, but not limited to, any gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee rebate, money, any promise, obligation or contract for future awards or compensation or any other thing of monetary value, from any **individual** or **entity** that:

- Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department or the Tennessee Consolidated Retirement System;
- Conducts operations or activities that are regulated by the Treasury Department;
- May bid on future procurement from the Department or a Board, Commission, or Committee administratively attached to the Department based on the employee's reasonable belief that the person or entity intends to submit a bid; or
- Has an interest that may be substantially affected by the performance or nonperformance of the employee's official duties.

Generally, gifts from a lobbyist or an employer of a lobbyist are prohibited; however, the following are exceptions to the general gift prohibition:

- A gift given for nonbusiness purpose and motivated by a close personal friendship and not by the position of the employee, and specifically authorized and defined by the Ethics Commission;
- Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
- Sample merchandise, promotional items, and appreciation tokens if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business;
- Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can readily be converted to cash;
- Benefits resulting from business, employment, or other outside activities of the employee or the employee's immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee;

- Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to, discounts afforded to the general public or prizes and awards given out in public contests;
- Expenses of out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials;
- Food, refreshments, amenities, goody bags, entertainment, or beverages provided as part of a meal, reception or similar event including tradeshow and professional meetings; and
- Food, refreshments, meals, foodstuffs, entertainment, beverages that are provided in connection with the following: an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which regularly meets at in-state events in which invitations are extended to legislative or executive branch employees. The value of the items shall not exceed fifty dollars (\$50.00) per person, per day.*

* The amount may be increased to reflect the percentage of change in the average consumer price index. The Ethics Commission publishes the increased amount on its website.

For other gifts offered which are not included in the exceptions above, the employee must obtain the written approval of the Assistant Treasurer for Legal, Compliance, and Audit.